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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/083,975	02/27/2002	Brent S. Nelson	876P148	6913

61146 7590 02/07/2007  
PEPSICO, INC.  
c/o GOODWIN PROCTER LLP  
599 LEXINGTON AVE  
NEW YORK, NY 10022

EXAMINER
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WEINSTEIN, STEVEN L

ART UNIT	PAPER NUMBER
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1761

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	02/07/2007	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

<b>Office Action Summary</b>	<b>Application No.</b>		<b>Applicant(s)</b>	
	10/083,975		NELSON, BRENT S.	
	<b>Examiner</b>		<b>Art Unit</b>	
	Steven L. Weinstein		1761	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 16 October 2006.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-38 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-38 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

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The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-9, 32, 33, 34 and 38 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ota et al (5,222,615) in view of Leigner (5,092,474), Tobias et al (5,762,221) and Ogg (6,044,997), further in view of Sugiura (4,749,092), Ota (5,238,129), Brody(5,740,934), Hayashi (4,877,141), and Welker(3,923,178), and further in view of Wiley Encyclopedia of Packaging Technology (hereinafter called "Wiley"), for the reasons given in the Office action mailed 4/18/06.

Claim 1 now recites that the panel sections are provided with respective flat outer surfaces and that the panels are joined to one another along respective corners. Although this language is a variant of the language previously submitted, the structure defined by the language is essentially the structure previously considered, and thus the claims are rejected for the reasons previously given. That is, and to summarize, Ota et al ('615) is considered to disclose panel sections that have flat outer surfaces and panels that are joined along respective corners. As noted previously, Ota et al ('615) discloses that the panels are optionally reinforced with ribs. Thus, without the ribs, the entire surface of the panels of Ota et al ('615) would be flat. Note, however, as claim 1 presently reads, the entire surface does not have to be flat since the claim recites that the panels have flat outer surfaces. which does not exclude some but not all of the surface. Also, as discussed previously, the "lands" of Ota et al ('615) can be construed

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as corners. Although Ota et al ('615) is therefore considered to teach both flat panels and corners joining the flat panels, as is also previously discussed, the art taken as a whole clearly and unequivocally discloses that containers with flat panels and corners joining the flat panels is notoriously conventional structure not only in container structure in general, but specifically in containers that are subject to pressure differentials. The amendments to claims 2 and 3 have been reviewed but are rejected for the reasons given above and previously.

Claims 10-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wiley Encyclopedia of Packaging Technology in view of applicant's admission of the prior art, further in view of Visioli ('901) and Wright et al ('353), for the reasons given in the Office action mailed 4/18/06 and above.

Claims 21-31 and 35-37 are rejected under 35 U.S.C. 103(a) as being unpatentable over the references as applied to claims 6-8 above, and further in view of applicant's admission of the prior art, Visioli and Wright who are applied for the reasons given in the Office action mailed 4/18/06 and above.

All of applicant's remarks filed 10/16/06 have been fully and carefully considered but are not found to be convincing. Applicant urges that Ota et al ('615) does not teach flat panels, but rather teaches collapsed panels. It is noted, in this regard, that the amendment does not address the remarks made in the previous Office action wherein it is pointed out that the panel sections of Ota et al ('615) are seen to be flat and connected to each other by the lands which are seen to be corners. The panel sections in Ota et al ('615) are therefore what applicant refers to as the depressed portions and

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the corners are the rest of the structure. Applicant's remarks are therefore directed to limitations not found in at least some of the claims. The amendment also urges that the secondary art does not teach flat panels "as required by claim 1" but rather "structured" panels. Although Ota et al ('615) is construed to disclose the structure as recited, Sugiara, Brody and Welker unequivocally disclose flat panels joined by corners. The amendment does not explain e.g., why the container of Sugiara with the flat panels (#7) joined by corners (#6) does not disclose applicant's recited vacuum panel structure. The amendment also urges that Welker discloses a bottom structure, which is different from the structure of Ota et al ('615), and thus there would be no motivation to combine the references. This urging is also not convincing. Since Ota et al ('615) already discloses the recited bottom structure, it is not necessary for the secondary reference to also disclose this structure. Rather, Welker is only being relied on to teach one can employ flat panels yieldable to differential pressures, which panels are connected to each other by corners. Finally, the amendment urges that the art taken as a whole does not suggest the combination of layers (and presumably their order) as recited, for example, in claim 10. This urging is totally unconvincing. The claims recite a series of conventional polymers, all of which are conventionally known and used in the packaging art as evidenced by Wiley. As background, and as noted by Wiley on page 89, two or more materials are layered in blow molding processes to take advantage of the properties of each material. It is urged that Wiley does not have the combination of elements as recited in claim 10. Wiley is not applied under 35USC102, anticipation, but rather under 35USC103, obviousness, so Wiley does not necessarily have to teach in

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one grouping all of the materials. However, contrary to the illustrative table, presented in the amendment, Wiley discloses a laminate that is substantially closer to the recited laminate and includes PP/regrind/adhesive/EVOH/adhesive/PP (fig. 4). It was pointed out in the last Office action that Wiley, substituted for De Groff et al, was being used for exactly the same reasons as De Groff et al and to modify Wiley and substitute polyamide for PP for its art recognized and applicant's intended function would therefore have been obvious. See also figure 14 of Wiley, which shows PP/adhesive/EVOH/adhesive/reclaim/PP and Table 9 of Wiley. Note that Wiley decided to omit from Table 9, the conventional adhesives, conventionally employed to prevent delamination. See, for example, in this regard, page 358 of Wiley, wherein it is disclosed that when using EVOH in multilayer structures, it is necessary to use an adhesive layer to gain adequate bonding strength to the other polymers.

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Steven L. Weinstein whose telephone number is 571-272-1410. The examiner can normally be reached on Monday-Friday 7:00 A.M.-2:30 P.M..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on 571-272-1398. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

*Steve Weinstein*  
STEVE WEINSTEIN  
PRIMARY EXAMINER 1761  
1/8/07